

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRAD HOLTORF

No. C-09-4560-EDL

Plaintiff,

v.

**ORDER DENYING MOTION TO
DISMISS AND ORDERING PRO SE
DEFENDANT POCKET BIKES
UNLIMITED TO OBTAIN COUNSEL**

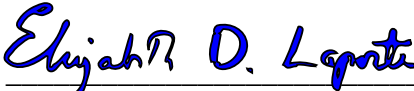
SCOTT VOLGER and POCKET BIKES
UNLIMITED

Defendants.

Pro se Defendant Scott Volger filed a Motion to Dismiss Defendant Brad Holtorf's Complaint for patent infringement for failure to state a claim. The Motion argued that, "the design and function of this product was already in use for the application(s) that Plaintiff is claiming," and attached various documents to support this contention. Plaintiff countered that the Motion stated an "anticipation" invalidity defense, and argued that the Court should not convert the Motion into one for summary judgment and rule on the merits of the defense. The Court held a hearing on December 22, 2009, during which the Court denied the motion to dismiss, informed Defendant that he could not represent the corporate defendant pro se, and ordered him to obtain counsel for the corporate defendant. The Court hereby Orders that Plaintiff's Motion to Dismiss is DENIED and Defendant Pocket Bikes Unlimited is Ordered to obtain counsel within 30 days of the date of this Order. Defendant Scott Volger is referred to the Court's Pro Se Help Desk.

IT IS SO ORDERED.

Dated: February 8, 2010


ELIZABETH D. LAPORTE
United States Magistrate Judge